State of New Hampshire
OFFICE OF ATTORNEY-GENERAL

COPY in CB4

2-52

1952

Aug. 1

Newell Brown, Director
Div. of Employment Security
Concord, New Hampshire

Dear Newell:

This will acknowledge your letter of July 11, 1952 in which you have pointed out what appears to be an inconsistency between certain language used in previous rulings by former Attorney General D'Amours and the Assistant Attorney General Henry Dowst. You have requested that we review the matter to determine "whether or not the involuntary separation of a state employee constitutes a break in service" in determining whether or not there is sufficient continuity to entitle an employee to the benefits of longevity under the state law.

It is my belief that the inconsistency is more apparent than real, as you have suggested. Returning to the law itself, the pertinent portion reads as follows:

> "Any regular classified employee of the state who has completed ten years of continuous service for the state shall be paid, in addition to the salary to which he is entitled by the classification plan, as above revised, the sum of sixty dollars annually and an additional sixty dollars for each additional five years of continuous state service." (Italics added) Laws of 1947, c. 243, s. 3.

Although the above-quoted section refers to a classification plan which has since been outmoded by the adoption of c. 9 of the Special Session Laws of 1950, s. 2 of the "Personnel Act" reaffirms the substance of the foregoing provisions.

The true test as to whether or not an employee is entitled to longevity payments is the determination as to whether or not his employment has been continuous for a period of ten years. As Mr. D'Amours has correctly stated, "continuous" is generally defined as without break, cessation, or interruption. Mr. Dowst is in substantial agreement when he applies the rule of construction, assigning the word its ordinary sense. R. L., c. 7, s. 2. The difficulty arises in the fact that this is the type of legislation which upon occasion must be broadly construed so as to confer the benefits intended by the Legislature. Among these benefits it is apparent that the employee was to be rewarded for faithful service and the State is likewise to be benefitted by the experienced service of those who have been induced to remain over the years in its employ to obtain these benefits.

It is improper to say that in any instance where separation is involuntary the service nevertheless remains continuous since neither the language of the law nor the benefits intended are served by such a construction. It is to be noted that Mr. D'Amours did <u>not</u> say that in instances of involuntary separation the service should nevertheless be construed as continuous. His language indicated that voluntary separation would break the continuity of service. This is a proposition too clear to admit of argument.

In conclusion, I see no inconsistency between Mr. D'Amours' letter and that of Mr. Dowst, although there is obviously an inconsistency between Mr. Dowst's letter and the administrative interpretation which has been given the former Attorney General's letter. It is my opinion, in answer to your question, that the general meaning assigned by Mr. D'Amours, to the effect that the word "continuous" means without break, cessation or interruption is correct; that in order to achieve the purposes of the law it is necessary on occasion to give it a broad construction; that there are certain instances of temporary separation suggested by Mr. D'Amours' letter, such as illness, where such a broad construction is warranted. However, such instances should be considered upom the facts of each case.

It is my opinion and conclusion that to say that state service is continuous merely because the separation is involuntary is an erroneous interpretatiom of the law.

In any particular instance where we may be of assistance in clarifying this matter, do not hesitate to call upon us.

Sincerely,

Gordon M. Tiffany
Attorney General

GMT/d

cc. Roy Lamy